SANTONG TRADING PTE. LTD.

v.

HJ INDUSTRIES SDN. BHD.

HIGH COURT MALAYA, JOHOR BAHRU
DATO' MOHD GHAZALI MOHD YUSOFF J
[ORIGINATING SUMMONS NO: 24-329 OF 1996]
9 AUGUST 1996

CIVIL PROCEDURE: *Foreign judgments – Judgments of High Court of Singapore – Registration of judgments as judgments of High Court of Malaya – Prerequisites – Whether judgments final and conclusive – Whether merits of case fully adjudicated upon in Singapore – Reciprocal Enforcement of Judgments Act 1958 ss. 2, 3(3), 3(3)(a), 3(4), 4(1).*

WORDS & PHRASES: *"Final and conclusive" – Reciprocal Enforcement of Judgments Act 1958 s. 3(3)(a).*

This was an application to register foreign judgments pursuant to s. 3(3)(a) of the Reciprocal Enforcement of Judgments Act, 1958 (the Act). The facts were that the plaintiff, a company incorporated in Singapore, had filed a suit against the defendant in the High Court in Singapore, *vide* Suit No. 580 of 1995, in respect of goods sold and delivered amounting to US$117,461.79 in value. The defendant admitted to a substantial part of the claim, ie, that goods amounting to US$116,861 were supplied to them, and consequently, the Senior Assistant Registrar (SAR) entered judgment on the admitted sum but gave unconditional leave to the defendant to defend the balance sum of US$600.79. These apart, the SAR also ordered that the defendant pay the plaintiff damages for breach of contract. The defendant appealed, wherefore the judgment in respect of the admitted sum, the interest thereon, the fixed costs of SD$2,800 and the order granting unconditional leave were affirmed by the learned Judge. Having affirmed those, however, the Judge ordered that the interlocutory judgment entered against the defendant for damages for breach of contract be set aside, and that costs of the appeal and of the application before the SAR be costs in the cause. The facts further showed that, in respect of the same contract, the defendant had filed a counterclaim against the plaintiff counterclaiming some US$237,481.33. This counterclaim was yet to be fixed for hearing.

It was not in dispute that the Republic of Singapore is a reciprocating country under the Act and that the judgment and orders referred to in this application were judgments of a superior Court as contemplated by the said s. 3(3). This notwithstanding, s. 3(3)(a) of the Act stipulated that, in order to qualify for registration, the judgments must be "final and conclusive as between the parties". The defendant opposed the application and argued that Suit No. 580 had not been concluded and that the merits of the whole claim had not been adjudicated upon in Singapore, with the result that the judgments in question

were not final and conclusive. Before the learned Judge, the sole issue that arose was whether the judgments (and orders) were "final and conclusive" within the contemplation of s. 3(3)(a) of the Act.

Held:

[1] The word "final" is intended to mean, and should be construed as meaning, final in the sense of admitting no further disputation. On the facts, the judgments cannot be regarded as "final and conclusive as between the parties thereto" within the contemplation of s. 3(3)(a) of the Act.

[2] The fact that the defendant was given unconditional leave to defend the balance sum of US$600.79 denotes that there existed controversies between the parties which were yet to be determined or adjudicated upon. Furthermore the issue of whether the defendant was liable to pay damages to the plaintiff for the alleged breach of sale contract, which forms part of the plaintiff's claim, was yet to be fixed for hearing.

[3] Although the defendant's admission, by itself, can be termed as final judgment, it did not put an end to the main suit. There were other issues to be adjudicated upon including the counterclaim by the defendant which was based upon the same contract. The counterclaim might be plausible, and it ought also to be noted that the amount counterclaimed was even larger than the amount that had been admitted. In these circumstances, the judgments referred to in the application cannot be said to be final and conclusive.

[4] The fact that the Judge ordered that costs of the appeal to be costs in the cause denotes that the matter is not conclusive as between the parties. The application is clearly premature as the whole suit should first be disposed of before the provisions of the Act can be invoked.

[5] Section 4(5) of the Act has no bearing to the application herein. Section 4(5) provides that if it appears that the judgment which is to be registered contain some orders which do not fall within the contemplation of the Act, those orders can be severed from that judgment before it is registered. This is certainly not the situation in the instant case.

[Application dismissed]

Cases referred to:

Muttiah v. Chan Kiam Ho [1933] MLJ 239 ***(refd)***

Ronald Quay Sdn. Bhd. v. Maheswary Sdn. Bhd. [1987] 1 MLJ 322 ***(refd)***

Societe des Etains de Bayas Tudjuh v. Woh Heng Mining Kongsi [1978] 2 MLJ 267 ***(refd)***

Re Riddel, ex parte, Strathmore (Earl) [1888], 20 QBD 512 CA ***(refd)***

Selbel & Day v. Cumins [1922] 16 SLR 405 ***(refd)***

Ramchand Manjunal v. Goverhamdas Ratanchand, LR 47 Ind App 124 ***(refd)***

Legislation referred to:
FMS Labour Code 1923, s. 98
Recriprocal Enforcement of Judgments Act, 1958, ss. 2, 3(3), (3)(a), (4), 4(1), (5)
Rules of Court of Singapore 1966
Rules of the High Court 1980, O. 14 r. 1

Other sources referred to:
Reciprocal Enforcement of Judgments and Service of Processes in Malaysia, [1981] 1 MLJ, p. cxvi
Words and Phrases Legally Defined, Butterworths, 2nd Edn., p. 110

For the plaintiff - CM Yeo; M/s. Paul Tan & Assoc.
For the respondent - T Rajasekaran; M/s. Mak, Ng, Shao & Kee

JUDGMENT

Mohd Ghazali Mohd Yusoff J:

This is an application by the judgment creditor (hereafter referred to as "the plaintiff"), a company incorporated in Singapore that the following judgments granted by the High Court of Singapore in Suit No. 580 of 1995 be registered as judgments of the High Court pursuant to the Reciprocal Enforcement of Judgments Act, 1958 (hereafter referred to as "the Act"), namely:

(i) a judgment dated 28 October 1995 before the Senior Assistant Registrar read together with an order dated 28 November 1995 before the Judge whereby it was adjudged that the judgment debtor (hereafter referred to as "the defendant"), a company incorporated in Malaysia do pay to the plaintiff the sum of US$116,861 interest thereon at US$3,745.95 and costs of S$2,800 (RM298,100.72, RM9,555.54 and RM5,079.76 respectively);

(ii) an order dated 5 February 1996 before the Assistant Registrar whereby it was ordered that the defendant do pay to the plaintiff the sum of S$400 (RM726.96) being costs awarded to the plaintiff of the application made by the defendant for an order to stay the execution of the judgment dated 28 October 1995;

(iii) an order that the defendant do pay the plaintiff the interest on the judgment debt, interest and costs referred to in paragraphs (i) and (ii) above pursuant to O. 42, r. 12 and O. 59, r. 37 of the Rules of Court of Singapore 1966 at the rate of 6% per annum from the respective date of the said judgment and order of Court to the date of payment or realisation.

Section 3(3) of the Act reads –

> Any judgment of a superior Court, other than a judgment of such a Court given on appeal from a Court which is not a superior Court, shall be a judgment to which this part applies, if –

(a) It is final and conclusive as between parties thereto;

(b) there is payable thereunder a sum of money, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty; and

(c) being a judgment from a country or territory added to the First Schedule pursuant to subsection (2), it is given after that country or territory is added to that Schedule.

Section 3(4) reads:

For the purposes of this section, a judgment shall be deemed to be final and conclusive notwithstanding that an appeal may be pending against it, or that it may still be subject to appeal, in the Courts of the country of the original Court.

Section 2 of the Act provides that the word "judgment" *inter alia* means "a judgment or order given or made by a Court in any civil proceedings".

Section 4(1) of the Act provides that a person, being a judgment creditor under a judgment to which this Part applies may apply to the High Court to have the judgment registered provided that the judgment shall not be registered if at the date of the application –

(a) it has been wholly satisfied; or

(b) It could not be enforced by execution in the country of the original Court.

It is not disputed that the Republic of Singapore is a reciprocating country under the Act and that the judgment and orders referred to in this application are judgments of the High Court, Singapore, ie, a superior Court.

The only issue in this application is whether the above said judgments are "final and conclusive" within the contemplation of s. 3(3)(a) of the Act.

At the hearing of this application Counsel for the plaintiff contended that there are three judgments arising from the said suit, namely –

(1) the decision of the Senior Assistant Registrar on 28 October 1995 wherein it was adjudged –

(a) that the defendant do pay the plaintiff the sum of US$116,861 with unconditional leave given to the defendant to defend the balance sum of US$600.79;

(b) that the defendant do pay the plaintiff damages for the defendant's breach of sale contract to be assessed by the Registrar;

(c) that the defendant do pay the plaintiff interest of US$3,745.95 being the interest on the judgment sum of US$116,861 at the rate of 6% p.a. from the date of filing the writ of summons to the date of judgment; and

(d) that the defendant do pay the plaintiff costs fixed at S$2,800 and costs of the assessment of damages reserved to the Registrar assessing the damages;

(2) On appeal by the defendant, the decision of the Judge on 28 November 1995 wherein it was ordered that –

(a) the interlocutory judgment entered against the defendant for damages for the defendant's breach of sale contract be set aside;

(b) that the costs of this appeal and of the application before the Senior Assistant Registrar be costs in the cause; and

(c) that the final judgment entered against the defendant for the sum of US$116,861, interest thereon and fixed costs of S$2,800 and unconditional leave to the defendant to defend the balance sum of US$600.79 do stand; and

(3) the decision of the Assistant Registrar on 5 February 1996 wherein the defendant's application to stay the execution of the judgment on the basis that they have a counterclaim was dismissed with costs.

Counsel for the plaintiff contended that the above judgment are "final and conclusive" as the Judge has affirmed the decision of the Senior Assistant Registrar that the defendant do pay the plaintiff the sum of US$116,861 interest thereon amounting to US3,745.95 and costs fixed at S$2,800 and the defendants application for stay of judgment has been refused by the Assistant Registrar and that the defendant has not appealed against that decision.

As to what is meant by the words "final and conclusive', he referred to the case of *Muttiah v. Chan Kiam Ho* [1933] MLJ 239 at p. 240 wherein Terrel J said –

> As to the necessity for the order being "final and conclusive" there can be no doubt whatever, as Lord Herschell said in the case of *Nouvion v. Freeman*, LR 15 AC p. 1, at p. 9, "It must be shown that in the Court by which it was pronounced, it conclusively, finally and for ever established the existence of the debt of which it is sought to be made conclusive in this country so as to make it *res judicata* between the parties.

In opposing the application Counsel for the defendant argued that the said Suit No. 580 of 1995 in the High Court of Singapore has not been concluded and hence the judgments referred to by the plaintiff cannot be said to be final and conclusive. He contended that the application is premature and pointed out that in the said suit, the plaintiff is claiming –

(1) US$117,461.79 being supply of knitting yarn to the defendant;

(2) US$129,500 being loss suffered as a result of selling goods which were not taken delivery by the defendant at a discounted price to third parties;

(3) US$18,000 being loss of profit under the sales contract with the defendant,

whereas in the statement of defence and counterclaim, the defendant –

(1) admits the sum of US$116,861 only for the claim with regard to the supplying of knitting yarn to the defendant;

(2) contends that defective and unmerchantable goods were sold by the plaintiff to the defendant; and

(3) is counterclaiming for US$237,481.33 being loss of profit and value of goods agreed to be returned to the plaintiff.

He argued that when the Judge heard the appeal, he only affirmed the judgment on the admitted sum of US$116,861 but has set aside the interlocutory judgment entered against the defendant for damages for breach of sale contract and ordered costs of the appeal and of the application before the Senior Assistant Registrar to be costs in the cause. He also pointed out that the defendant's counterclaim and the plaintiff's claim for damages and loss of profits have not been fixed for hearing. He then submitted that the fact that the Judge ordered costs in the cause shows that the dispute between the parties is not final and conclusive.

To support his contention that the matter between the parties is not final and conclusive as the merits of the whole claim have not been adjudicated in Singapore, he referred to an article entitled *"Reciprocal Enforcement of Judgments and Service of Processes in Malaysia"* (1981) 1 MLJ p. cxvii wherein the learned writer was of the view that "A judgment is final and conclusive if it determines all controversies between the parties. If it may be altered in later proceedings between the same parties in the same Court, it is not final and conclusive." To support his view the writer said (at the same page):

> An illustration is afforded by *Blohn v. Asesser* [1961] 3 All ER 1. In that case, an action was brought against the defendant personally upon an Austrian judgment that had been given not against her individually, but against a firm of which she was a member. To have rendered her personally liable under Austrian law, would have necessitated a separate action against her individually, but in this event certain defences would have been available to her that could not have been raised in the proceedings against the firm. Therefore, even if it could be regarded as proven against her personally, it was not final and conclusive.

Counsel for the defendant then referred to the case of *Ronald Quay Sdn. Bhd. v. Maheswary Sdn. Bhd.* [1987] 1 MLJ 322 – In that case the plaintiff applied for summary judgment under O. 14, r. 1 of the Rules of the High Court 1980 which was allowed by the Senior Assistant Registrar but he subsequently allowed the defendant's application for stay of execution pending the trial of a counterclaim made by the defendant. The plaintiff appealed to the Judge who dismissed the appeal on the ground that the defendant has set out a plausible counterclaim in that it is reasonably possible for it to succeed at the trial and that the counterclaim is not frivolous. In his judgment the Judge referred to the case of *Societe des Etains de Bayas Tudjuh v. Woh Heng Mining Kongsi* [1978] 2 MLJ 267 at p. 269 where Abdoolcader J (as he then was) said:

> If a defendant, though he admits part of the plaintiffs claim, sets up a defence to the residue and a counterclaim for a larger amount than the part of the plaintiff's claim admitted, he is entitled to unconditional leave to defend as to the whole (*Court v. Sheen*, 7 TLR 556). When a *bona fide* counterclaim is set up arising out of the subject-matter of the action connected with the grounds of defence, unconditional leave to defend should be given, even where the defendant admits part of the plaintiff's claim, as in such circumstances such admission is only subject to the counterclaim which might turn out to be larger in amount (*Court v. Sheen (supra)*).

In reply, Counsel for the plaintiff submitted that a distinction must be drawn as to whether a judgment is final and conclusive and whether the matter as a whole is final and conclusive. He argued that the judgment he obtained on the admission is final and conclusive and that the counterclaim relates to a different matter. He then referred to s. 4(5) of the Act which reads:

> If, on an application for the registration of a judgment, it appears to the registering Court that the judgment is in respect of different matters and that some, but not all, of the provisions of the judgment are such that if those provisions have been contained in separate judgments those judgments could properly have been registered, the judgment may be registered in respect of the provisions aforesaid but not in respect of any other provisions contained therein.

He then pointed out that the case of *Ronald Quay Sdn. Bhd. v. Maheswary Sdn. Bhd.* cited by Counsel for the defendant relates to the question of stay of execution which has no bearing on the instant case.

Can the said judgments which form the subject-matter of this application be regarded as "final and conclusive as between parties thereto" within the contemplation of s. 3(3)(a) of the Act? I do not think so. In my view the important word for present purposes is "final" and I think it is intended to mean, and should be construed as meaning, final in the sense of admitting no further disputation.

As to what is meant by the words "final and conclusive", Counsel for the plaintiff referred to the case of *Muttiah v. Chan Kiam Ho* which to me, does not seem to be of much assistance. In that case the Court ruled that an order of the Deputy Controller of Labour, Ipoh under s. 98 of the FMS Labour Code 1923 is not a final and conclusive order productive *res judicata* between the parties thereto and therefore cannot be sued on in the Court in the Colony of Singapore as a foreign judgment as the Labour Code provides that even if the plaintiff had commenced proceedings before the Controller and got an order, he can at any time before actual satisfaction of the order commence other proceedings in the Magistrate's Court which may come to an entirely different conclusion on the some facts.

As to what is meant by a final judgment, the commentary at p. 110 of *Words and Phrases Legally Defined* (Butterworths, 2nd edition) reads:

> In general a judgment or order which determines the principal matter in question is termed "final". A final judgment has been defined as "a judgment obtained in an action by which a previously existing liability of the defendant to the plaintiff is ascertained or established" or as "a judgment obtained in an action by which the question whether there was a pre-existing right of the plaintiff against the defendant is finally determined in favour either of the plaintiff or of the defendant.

In *Re Riddel, Ex p. Strathmore (Earl)* [1888], 20 QBD 512 CA at p. 517 Fry LJ said:

> Nothing can be a final judgment by which there is not a final and conclusive adjudication between the parties of the matters in controversy in the action.

In *Selbel & Day v. Cumins* [1922] 16 SLR 405 at p. 412 the Court held that "a judgment is final when it does, if allowed to stand, finally dispose of the rights of the parties".

In *Ramchand Manjunal v. Goverhamdas Ratanchand,* LR 47 Ind App 124 it was held that an order is not a final order unless it has the effect of finally disposing the rights of the parties.

According to the facts in the instant case which are not disputed, the plaintiff is suing for payment for goods sold and delivered, for loss as a result of selling goods which were not taken delivery by the defendant and for loss of profit under the sales contract with the defendant. Those claims arose from the same transaction and relate to the same goods. The defendant has admitted to a substantial part of the claim, namely, it has admitted that goods amounting to US$116,861 were supplied to them and not US$117,461.79 as claimed and hence judgment on that sum as admitted was entered against the defendant by the Senior Assistant Registrar. Consequently the defendant was given unconditional leave to defend the balance sum of US$600.79. However the Senior Assistant Registrar also ordered that the defendant do pay the plaintiff damages for breach of sale contract.

On appeal by the defendant, the Judge ordered that the final judgment entered against the defendant for the sum of US$116,861, interest thereon and fixed costs of S$2,800 and unconditional leave to the defendant to defend the balance sum of US$600.79 do stand but he also ordered that the interlocutory judgment entered against the defendant for damages for breach of sale contract be set aside and that the costs of the appeal and of the application before the Senior Assistant Registrar be costs in the cause.

In my view, the fact that the defendant was given unconditional leave to defend the balance sum of US$600.79 denotes that there exist controversies between the parties which have yet to be determined or adjudicated upon. Furthermore the issue as to whether the defendant was liable to pay damages to the plaintiff for the alleged breach of sale contract which forms part of the plaintiff's claim has yet to be fixed for hearing.

It is clear that the plaintiff's claim centres around the same subject-matter, namely, a contract for the supply of knitting yarn, and that there are other issues to be adjudicated upon including the counterclaim by the defendant based upon the same contract would denote that there will be further disputation. The defendant may have a plausible counterclaim and it is noted that the amount it is counterclaiming is even larger than the amount that has been admitted to wherein final judgment was entered. Although that admission can by itself be termed a final judgment, it did not put an end to the main suit. Under the circumstances I am of the view that the said judgments referred to in the application cannot be said to be final and conclusive.

I would tend to agree with Counsel for the defendant that the fact that the Judge ordered that costs of the appeal to be costs in the cause denotes that the matter is not conclusive as between the parties and I would also tend to agree with Counsel that this application is premature. In my opinion the whole suit should be disposed of before the provisions of the Act can be invoked.

I am also of the view that s. 4(5) of the Act which was referred to by Counsel for the plaintiff to support his contention that the said judgments can be registered accordingly under the Act has no bearing on the application before me. Section 4(5) provides that if it appears that the judgment which is to be registered contain some orders which do not fall within the contemplation of the Act, those orders can be severed from that judgment before it is registered. This is certainly not the situation in the instant case.

Under the circumstances and for the reasons above stated, this application is dismissed with costs.

Reported by W.A. Sharif